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HUMAN RESOURCES MANAGEMENT: OTHER HUMAN RESOURCES QUESTIONS

# Payment of repatriation grant to staff members living in their home country while stationed at duty stations located in another country

## Report of the Secretary-General

1. The General Assembly, in section II D of its resolution 48/224 of 23 December 1993 on the United Nations common system, requested the International Civil Service Commission (ICSC) to study further the practices of the organizations of the United Nations common system regarding the granting of expatriate entitlements to staff members living in their home country while stationed at duty stations located in another country,

> "... with a view to harmonizing the practices of the organizations with those of the United Nations and to make recommendations thereon to the General Assembly at its fifty-first session."

2. The practice followed by the United Nations has been not to pay expatriate benefits, including repatriation grant, education grant and home leave, to staff members living in their home country while stationed at duty stations located in another country. In other words, payment of expatriate benefits was made only to those staff members who worked and resided outside their home country.

3. The practice, in so far as it related to repatriation grant, had been challenged in 1987 before the Administrative Tribunal which, in Judgement No. 408, Rigoulet, held that the practice conformed to the language in the Staff Regulations. However, in Judgement No. 656, Kremer, Gourdon, communicated to the Secretary-General on 6 October 1994, the Tribunal reversed itself and overruled Rigoulet. The Tribunal held that the language of annex IV to the Staff Regulations did not support the practice followed by the United Nations

and ordered the Secretary-General to pay repatriation grant to the two applicants.

4. The Legal Counsel has advised that a request to the Committee on Applications for Review of Tribunal Judgements to seek an advisory opinion from the International Court of Justice (ICJ) would serve no useful purpose as none of the four grounds listed in article 11, paragraph 1, of the statute of the Tribunal can be found in the case: the Tribunal acted within its competence and exercised jurisdiction; there was no error on a provision of the Charter; nor was there an error in procedure. He thus advised that the judgement must be implemented and repatriation benefits paid to the applicants. This has been done.

5. The matter is brought to the attention of the Assembly so that it can, if it wishes, take appropriate legislative action in the light of the Tribunal's interpretation of the Staff Regulations in a manner that has invalidated long-standing policy.

6. The Secretary-General notes that there would appear to be two options for legislative action:

(a) The General Assembly could accept the Tribunal's interpretation of annex IV to the Staff Regulations, either explicitly or by taking no positive action as a result of the judgement. By virtue of the general principle of equality of treatment, the Secretary-General would, in the future, have to pay repatriation grant to staff members similarly situated, i.e., to all eligible staff members who reside in their home country while working in another country, as from the date of the judgement. Should this first option be selected, there is a strong possibility that the reasoning used by the Tribunal with respect to annex IV to the Staff Regulations would eventually be extended to the interpretation of staff regulations 3.2 and 5.3 governing, respectively, eligibility to education grant and home leave. This would reverse the practice previously followed by the United Nations, and explicitly endorsed by resolution 48/224 referred to in paragraph 1 of the present report;

(b) The General Assembly could amend annex IV to the Staff Regulations, as well as staff regulations 3.2 and 5.3, in order to state explicitly that expatriate benefits are not payable unless an otherwise eligible staff member both works and resides outside his or her home country.

7. Should the General Assembly decide to adopt the first option, it could adopt a resolution in the form set out under option A in the annex to the present report, or it could simply take no action. The first variant is preferable as the matter involves fundamental legislative policy, which should be clearly set out.

8. For Geneva staff alone, it is estimated that the additional cost of paying repatriation grant to present staff members who reside in France and would become eligible for the grant on the basis of the judgement upon separation would amount to US$ 3,870,800. Extension of the Tribunal's reasoning to education grant would result in a recurrent cost estimated at US$ 1,064,000 per

year. Extension of the Tribunal's reasoning to home leave would result in a recurrent cost estimated at $199,500 per biennium.

9. Should the General Assembly decide to adopt the second option, it may wish to consider the suggested amendments to the Staff Regulations set out under option B in the annex to the present report. Furthermore, as Judgement No. 656 may constitute a disincentive for the other organizations to harmonize their practices with those of the United Nations, since their Staff Regulations are broadly based on those of the United Nations, the General Assembly may also wish to request the governing bodies of the organizations of the common system to amend their Staff Regulations and Rules in accordance with the policy reaffirmed by the Assembly, and to inform ICSC of their actions.

10. Finally, the Secretary-General notes that, unless and until the General Assembly decides to amend the Staff Regulations, he is obligated to conform to the interpretation of annex IV to the Staff Regulations given by the Tribunal in Judgement No. 656, and must therefore pay repatriation grant to eligible staff members who lived in France but worked in Geneva and have separated or will separate from service after the date of the judgement.

Annex

OPTION A: ACCEPTANCE OF PAYMENT OF EXPATRIATE BENEFITS FOR STAFF LIVING IN THEIR HOME COUNTRY AND WORKING IN ANOTHER COUNTRY

Variant 1

"The General Assembly

"1. Notes the decision of the Administrative Tribunal in Judgement No. 656, Kremer, Gourdon;

"2. Accepts the principle that expatriate benefits shall be paid to staff who live in their home country but work in a duty station in another country."

Variant 2

Take no action.

OPTION B: LIMITATION OF PAYMENT OF REPATRIATION [AND OTHER EXPATRIATE BENEFITS] TO STAFF WHO BOTH WORK AND RESIDE IN A COUNTRY OTHER THAN THEIR HOME COUNTRY 1/

"The General Assembly

"1. Notes the decision of the Administrative Tribunal in Judgement No. 656, Kremer, Gourdon;

"2. Rejects the principle that repatriation grant [and other expatriate benefits] shall be paid to staff who live in their home country but work in a duty station in another country and affirms that its intention was and remains that repatriation [and other expatriate benefits] be limited to staff who both work and reside in a country other than their home country;

"3. Amends the Staff Regulations accordingly, as follows:

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1/ If this option is selected it would appear desirable to deal with all similar expatriate benefits as well. If this Assembly wishes to do so, the square brackets should be removed from the words "[and other expatriate benefits]".

"Article III

"SALARIES AND RELATED ALLOWANCES

"Regulation 3.2: (a) The Secretary-General shall establish terms and conditions under which an education grant shall be available to a staff member residing and serving outside his or her recognized home country whose dependent child is in full-time attendance at a school, university, or similar educational institution of a type that will, in the opinion of the Secretary-General, facilitate the child's reassimilation in the staff member's recognized home country.

...

"Article V

"ANNUAL AND SPECIAL LEAVE

"Regulation 5.3: Eligible staff members shall be granted home leave once in every two years. However, in the case of designated duty stations having very difficult conditions of life and work, eligible staff members shall be granted home leave once in every twelve months. A staff member whose home country is either the country of his or her official duty station or the country of his or her normal residence while in United Nations service, shall not be eligible for home leave.

"Annex IV

"REPATRIATION GRANT

"In principle, the repatriation grant shall be payable to staff members whom the Organization is obligated to repatriate and who at the time of separation are residing, by virtue of their service with the United Nations, outside their country of nationality. The repatriation grant shall not, however, be paid to a staff member who is summarily dismissed. Eligible staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station. Detailed conditions and definitions relating to eligibility and requisite evidence of relocation shall be determined by the Secretary-General."

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